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## **Protect Your Medical License – Review Liability Insurance for Legal Defense Coverage**

Under the authority of New York Public Health Law, the Office of Professional Medical Conduct ("OPMC"), exists within the New York State Department of Health for the purpose of conducting investigations and disciplinary proceedings pertaining to physicians. The OPMC is empowered to investigate allegations of misconduct by a licensee from almost any source including the general public, hospital administrators or colleagues of the health care professional.

Generally speaking, the scope of professional misconduct is defined by the Legislature in such a manner, so as to include on one end of the spectrum, misconduct egregious enough to be construed as "fraudulent, grossly negligent, grossly incompetent, or rendering the licensee morally unfit to practice under his or her license." At the extreme opposite end of the spectrum, is misconduct of such a nature that it would constitute "inappropriate dramatizations or portrayals of the professional practice advertised on radio or television."

Unfortunately, and in some cases catastrophically for the licensee, each and any one of these transgressions can fall under the superseding authority of the OPMC for purposes of investigation and continued licensure. Browse, for just a few minutes, the OPMC's website ([www.health.state.ny.us/nysdoh/opmc/main.htm](http://www.health.state.ny.us/nysdoh/opmc/main.htm)) and you will know shortly the kind of misconduct proscribed and the sanctions that can result including license revocation. As the website implies, any disciplinary action taken against a licensee becomes part of the public record.

To be sure, some violators do act with gross incompetence or in a morally unfit way and deserve their lot. On the other hand, most professionals are competent and moral but occasionally things go wrong or patients can be unreasonable. My experience with the OPMC has shown that most of the cases are dropped after the initial investigation. Too often, I have been told by the State that it is their obligation to investigate every complaint regardless of the source or the credibility of the complaint. Having said that, it is still my strongest recommendation that all medical professionals be represented when caught in the web of the OPMC's beauracracy.

The repercussions of an OPMC investigation can be severe. Too often, a highly sophisticated and successful medical professional enters the fray without appropriate representation. So much damage could be avoided if the licensee met fire with fire by employing an advocate to take on

the agency for him. The OPMC has a skillful way of maneuvering the professional into an early discussion about the complaint that 90% of the time comes back to haunt the physician who has gone into the meeting without counsel or the opportunity to have reviewed the entire medical record. The whole case flows from this initial discussion. The investigator has total control to recommend that the case go on to Investigative Committee and eventual charges or to close it down because of insufficient cause. Effective assistance of counsel from day one levels the playing field and helps position the investigation for an early termination or at least a negotiated resolution under acceptable, less damaging terms.

Fortunately, most medical malpractice insurance policies issued in New York provide reimbursement for legal fees incurred by a physician in defense of an OPMC investigation. From 1998 to 2006, coverage was automatic and did not cost anything extra. Last year, however, the physicians began to underwrite the expense by paying an additional \$300 premium for \$25,000 in coverage; \$800 for \$100,000 in coverage. Incidentally, the coverage may also apply in the defense of a claim for Medicare/Medicaid Fraud or Abuse. Be not concerned that by alerting the carrier of an OPMC investigation that this could lead to increased premiums. Insurance companies raise premiums as a result of pay-outs, not successfully defended cases. A physician, moreover, has a duty to report all claims or even incidents that could lead to claims to the carrier or else risk losing coverage.

Thousands of complaints are received by the OPMC each year. In the event you should find yourself targeted, review your professional liability policy for legal defense coverage. Be sure to protect yourself and your family by preserving one of your most valuable assets: your medical license.

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